



U.S. Department of Justice

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District of Hawaii*

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March 29, 2007

VIA FACSIMILE, E-MAIL AND U.S. MAIL

Moises A. Aviles, Esq.  
Aviles & Associates  
560 N. Arrowhead Ave., Ste. 2A  
San Bernardino, CA 92401

Re: Bruno, et al. v. Au, et al.  
Civil No. 03-00567 JMS BMK

Dear Mr. Aviles:

I am writing to express my concern about your failure to comply with the court's schedule, and the prejudice that failure has caused (and continues to cause) to my preparation of defendant's case in this matter.

As you know, the scheduling order entered by the court required the parties to exchange exhibits by Tuesday, March 20, and to confer to discuss stipulating to the admissibility and relevance of exhibits in time to file a stipulation with the court by Tuesday, March 27. Late in the day on March 20, I received plaintiff's exhibit list via facsimile from your office. I did not receive any exhibits on that date. In the days following, I left several telephone messages and sent one email to you, requesting copies of those of plaintiff's exhibits that were not already in defendant's possession, and seeking to arrange a telephone conference to discuss stipulations. You did not transmit any of your exhibits until March 27. On that date I received, again via facsimile, copies of your Exhibits 200 through 218 and 220 through 228. I received a paper duplicate of Exhibit 219, apparently a DVD, but not the DVD itself. I did not receive Exhibits 229 through 246. I still have not received the latter exhibits.

Yesterday you finally called me to discuss the exhibits, and you promised to get me the remaining exhibits as soon as possible. We also agreed to confer today at 9:00 a.m. Hawaii time

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to discuss stipulations, on the assumption that I would have all your exhibits by that time. Later in the day yesterday I spoke with Hank of your office, who repeatedly referred to "three missing items" and appeared not to understand what was missing from your production. I explained to him repeatedly that I needed Exhibit 219, Exhibits 229 through 232, and Exhibits 239 through 246. I told him I had Exhibits 233 through 238. I also told him that I needed to see what in Exhibits 229 and 232 (defendant's discovery responses) plaintiff intends to introduce at trial. Later in the day, however, I received an email from Hank, titled "The three items", and attaching copies of your witness list, exhibit list and deposition designations, all of which I already have.

Today at 9:00 Hawaii time I received a call from Elizabeth in your office, indicating that you were caught in court and would be unable to participate in our conference. I told her that I would be available until noon Hawaii time. She said she would check with you and get back to me as to when you would be able to call. Neither of you called back.

As I said in our conversation yesterday when we scheduled the meeting for 9:00 today, I will be out of the office tomorrow and Monday. Thus, even if the documents come in tomorrow, I will be unable to discuss stipulations until Tuesday at the earliest.

At this point I must ask that you tell me in writing what you propose to do about the late production of documents. The delay has seriously hampered my ability to prepare for trial and to meet the court's deadlines. In addition to (not instead of) putting this in writing, I ask that you call me on my cell phone at (808) 428-3229 to discuss this matter. I reserve the right to object to any of your exhibits as untimely.

Very truly yours,

EDWARD H. KUBO, JR.  
United States Attorney  
District of Hawaii

By   
THOMAS A. HELPER  
Assistant U.S. Attorney

TAH:cts